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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 510 (WHP)

5 MICHAEL WEIGAND,

6 Defendant.

7 -----x

Videoconference

8 Sentencing

9
10 December 18, 2020
2:00 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge

14
15
16 APPEARANCES

17 AUDREY STRAUSS

18 Acting United States Attorney for
the Southern District of New York

19 BY: MICHAEL D. NEFF

20 Assistant United States Attorney

21 AVROM J. ROBIN

22 Attorney for Defendant

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1 THE COURT: In the case of United States of America v.
2 Michael R. Weigand, would counsel for the government give his
3 appearance.

4 MR. NEFF: Good afternoon, your Honor. Michael Neff
5 for the government, and also on the line are IRS Supervisory
6 Special Agent Gary Alford and F.B.I. Special Agent Sam
7 Shahrani.

8 THE COURT: All right. Good afternoon to you,
9 Mr. Neff.

10 Would counsel for the defendant give his appearance.

11 MR. ROBIN: Good afternoon, your Honor. This is Avrom
12 Robin for the defendant, Michael Weigand, who is also present
13 with us via Skype. He is wearing a red shirt. You should be
14 able to see him.

15 THE COURT: I am. Thank you. Good afternoon to you,
16 Mr. Robin.

17 Mr. Weigand, I note your presence via Skype. Are you
18 able to see and hear me, sir?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Very well. And just for the record, where
21 are you currently located?

22 THE DEFENDANT: At home.

23 THE COURT: All right. And where is that, sir?

24 THE DEFENDANT: That would be Kirtland, Ohio.

25 THE COURT: All right.

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1 Now, we are here today for sentencing. As we all
2 know, we are in the middle of the COVID pandemic, and I'm
3 conducting this proceeding remotely pursuant to the authority
4 provided by the CARES Act, Section 15002, and the standing
5 orders that were issued by the chief judge of this district.
6 I'm proceeding by videoconference, namely, via Skype, as are
7 counsel and the defendant.

8 Mr. Robin, have you discussed with your client
9 proceeding today via videoconference as opposed to appearing in
10 court in person?

11 MR. ROBIN: Yes, Judge, I have.

12 THE COURT: All right.

13 Mr. Weigand, do you waive your right, sir, to be
14 physically present in court and to proceed today by
15 videoconference?

16 THE DEFENDANT: I do.

17 THE COURT: And if at any point during this
18 proceeding, you are unable to hear me or see me or the other
19 participants in this proceeding, will you let me know right
20 away so that we can address that?

21 THE DEFENDANT: I will.

22 THE COURT: And also if at any point you would like to
23 speak privately with your attorney, will you let me know that
24 right away, and I will -- so that we can coordinate that with
25 you and your attorney?

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1 THE DEFENDANT: I will.

2 THE COURT: Very well.

3 Based upon this colloquy, I find a knowing and
4 voluntary waiver of the right to be physically present for this
5 proceeding. I also find that today's proceeding cannot be
6 further delayed without serious harm to the interests of
7 justice. It is important that this matter proceed through
8 sentencing to bring finality to the matter both for the Court
9 and the parties. Resolution of this matter remotely advances
10 these issues and promotes justice without undue delay to wait
11 until some unknown time in the future when we can proceed in
12 person. And so I find that this proceeding cannot be further
13 delayed without serious harm to the interests of justice.

14 As I have said, this matter is on for sentencing. Are
15 the parties ready to proceed?

16 MR. NEFF: Yes, your Honor.

17 MR. ROBIN: Yes, for the defense, we are ready.

18 THE COURT: All right.

19 Mr. Robin, have you reviewed with your client the
20 presentence investigation report?

21 MR. ROBIN: Yes, Judge, I have.

22 THE COURT: All right. I note that the parties had
23 previously submitted various amendments to the report, and I
24 ask you, Mr. Robin, whether the defendant has any further
25 modifications or amendments to the presentence report?

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1 MR. ROBIN: I do just have one small one, Judge, but
2 it's more by way of a clarification. It goes to paragraph 89,
3 about the defendant's negative monthly cash flow.

4 THE COURT: Go ahead.

5 MR. ROBIN: Just going back one page, to paragraph 20,
6 the reason for the negative monthly cash flow on this specific
7 month -- it is not a habit of Mr. Weigand and his wife to
8 overspend -- under "clothing" there is an entry for \$704, and
9 that includes, by mistake, an amount that was spent for a new
10 set of tires for Mrs. Weigand's car, totaling about \$600 or
11 over \$600, so that explains the negative cash flow in this
12 given month.

13 THE COURT: All right. I appreciate that
14 clarification. Is there any reason to make any change in the
15 report?

16 MR. ROBIN: No, I don't think so, Judge. I don't
17 think it is necessary.

18 THE COURT: All right. Thank you.

19 Mr. Neff, are there any matters in the presentence
20 report that the government believes warrant modification or
21 correction?

22 MR. NEFF: Thank you, Judge. There is, I believe --
23 there are two small joint requests from the parties, and
24 Mr. Robin will correct me if I am mistaken. We submitted an
25 e-mail to your Honor's deputy last night just so that your

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1 Honor would have the precise wording that we are proposing and
2 the alphanumeric string associated with one of the identifying
3 numbers. Would it be useful for me to read those two things
4 into the record, those two requests?

5 THE COURT: Yes, I think it would, Mr. Neff.

6 MR. NEFF: Certainly.

7 As to paragraph 41 of the PSR, there is a request to
8 strike the phrase "and there is no evidence that links Weigand
9 to the murder-for-hire scheme." And then in paragraph 42, the
10 request is to add a new sentence at the end of that paragraph,
11 following the block quote, which would state, "There is no
12 evidence or claim that links Weigand to the murder-for-hire
13 scheme of Ulbricht and Clark." That is the first request.

14 The second request, which also is a joint request, is
15 that Mr. Weigand's F.B.I. and Marshal numbers be added to page
16 2 of the PSR, which I believe presently states "unknown," but
17 recently those numbers have become known. The Marshal number
18 is 20570-509, and the F.B.I. number is R748EL9TN.

19 THE COURT: All right. I will endeavor to have those
20 physical corrections made to the presentence report.

21 MR. NEFF: Thank you, Judge.

22 THE COURT: All right.

23 I have received the parties' various submissions.
24 Mr. Robin, do you wish to be heard?

25 MR. ROBIN: I do, Judge. Thank you.

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1 I would like to speak on three topics. One is
2 Mr. Weigand's character; the second is the crime we are here
3 for today; and the third is the appropriate sentence. I will
4 be brief on all of the subjects because I have covered them in
5 depth in my submission.

6 To Mr. Weigand's character, Judge, this conduct is out
7 of character, in what has -- in his life otherwise, which has
8 been conventional, hard-working, tax-paying. The letters and
9 the PSR speak to his being a good family man, a good husband, a
10 good father, a good son-in-law.

11 He spent the whole of his 59 years in the State of
12 Ohio. There is not a hint of any bad conduct anywhere in his
13 background other than this offense, and the strong letters from
14 his family support that. The family is clearly -- and this
15 comes out in the letters -- in shock and disbelief that he
16 would do anything criminal, because it is out of character for
17 him, as they know him and as they have lived with him.

18 Even Mr. Weigand's present employer, with whom he has
19 discussed this case and given a copy of his plea agreement,
20 said he is willing to keep Mr. Weigand on as a software
21 engineer, providing he doesn't have to go to jail and can't
22 work, and that, again, is because of his character and the good
23 quality of his work that he does.

24 And even Roger Thomas Clark, who we will get to in a
25 minute, says at some point that Mr. Weigand wants to be a

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1 family man and doesn't want to go all in to this crime.

2 And with that, I will turn to my second piece, the
3 crime, the Silk Road.

4 The crime of sentence is lying to federal agents, but
5 the background of the subject lies in Mr. Weigand's
6 relationship to Roger Thomas Clark, whose case I know is
7 pending before your Honor.

8 Mr. Weigand met Roger Thomas Clark online in 2005, as
9 I explained in my sentencing memorandum, and Mr. Weigand bonded
10 with Clark back then when Mr. Weigand was looking for a source
11 for marijuana for medical use to treat his father-in-law's
12 lymphoma, and their online relationship, Clark and Weigand,
13 continued. And this is the source of Mr. Weigand's problems
14 here.

15 His problem, as I see it, stems from the fact, Judge,
16 that he never learned to say no to Clark's requests. And at
17 some point, certainly by 2011, when Clark had become Ross
18 Ulbricht's right-hand man and senior advisor in the Silk Road,
19 paragraph 10 in the PSR, Mr. Weigand should have been asking
20 himself a lot more questions about what Clark was doing with
21 Mr. Weigand's work product and insights and technological
22 assistance and guidance. Mr. Weigand turned a blind eye here.
23 And we know that willful blindness is not a defense, and
24 Mr. Weigand's guilty plea acknowledges that reality, because
25 his lies to law enforcement were in an attempt to cover up what

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1 he now knows was illegal conduct, the Silk Road.

2 Still, he is not responsible -- he, my client -- for
3 the whole of the Silk Road. He is a guy who did some tech work
4 for the Silk Road. He didn't do all of the tech work. A lot
5 of other people were involved. He did not, for example, as is
6 referred to in paragraph 14 of the PSR, set up the so-called
7 tumbler that disguised the processing of Bitcoin transactions.

8 The government does detail in their letter what he did
9 do. I'm not going to quibble with that now. But I think he
10 had a lesser role, judging from the amounts of money we are
11 talking about here and from the fact that other people who have
12 been sentenced by other judges were significantly more
13 involved. Silk Road would have existed without Mr. Weigand.
14 He is good at what he does, my client, but his skills are not
15 unique to him.

16 I would like to turn now for a minute to the money
17 amounts that have come up in the record here so far. Paragraph
18 17 -- and when I speak of paragraphs, I of course refer to the
19 PSR -- Ulbricht's assets, \$104 million; paragraph 18,
20 Ulbricht's seized Bitcoins, \$18 million; paragraph 21 and
21 paragraph 47, Mr. Weigand's loss amount here, which is part of
22 his guideline calculation, a total of \$75,000 -- \$10,000 in
23 YubiKeys, a security device that he sold a number of on eBay,
24 and \$65,000 in Bitcoins.

25 So I think when you put that up against even the

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1 lesser amount of \$18 million Ulbricht-seized Bitcoins, kind of
2 gives you some idea of Mr. Weigand's relative position in this
3 case.

4 Yes, paragraph 25, he supplied advice, technological
5 analysis, ideas and --

6 (Indiscernible crosstalk)

7 THE COURT: Excuse me. Whoever is interrupting this
8 proceeding, please put your phone on mute.

9 Please proceed, Mr. Robin.

10 MR. ROBIN: Thank you, Judge.

11 And paragraph 26, again, Clark says he is not in the
12 top circle, Mr. Weigand, because he doesn't want to be. He
13 wants to raise a family without the high level of stress. He
14 is a resource, and a great one, but doesn't want to go all in.

15 I'm going to move on to sentence here, Judge, the
16 third and final part of my presentation. I want to talk for a
17 minute about the guidelines and the loss amount. I know we
18 have lots of conversations about how loss amount and, in other
19 cases, drug amounts drive the guidelines. I think in a way
20 this case is a good example, because if Mr. Weigand were at
21 just one level less, in other words, if he were at 15 to
22 \$40,000 loss amount, instead of the \$40 to \$95,000 he is in, we
23 would be adding four levels, not six levels, and his
24 guideline -- his total adjusted guideline range would be zero
25 to six months instead of six to twelve months, and I would be

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1 asking for a sentence at the bottom of range, not a variance,
2 like I am now. And that is not a big difference, I submit, 25,
3 \$30,000.

4 Moving on, as your Honor is obviously acutely aware,
5 this is not business as usual today. COVID is a once-in-100-
6 years event. Mr. Weigand is not young. He is not of a normal
7 body mass. He is at higher risk if he is imprisoned.

8 The felony conviction, Judge, here, is the real
9 punishment. If the present employer does let him go, and we
10 hope he doesn't, but if that happens, Mr. Weigand is going to
11 have a really tough time getting rehired at the age of 59 with
12 a felony conviction in his field.

13 So I submit there is no need to incarcerate him. The
14 reality of the felony conviction, in addition to his age,
15 obesity, the COVID risk, his lack of prior offenses, all
16 support a nonjail sentence in this case.

17 Thank you, Judge.

18 THE COURT: Thank you, Mr. Robin.

19 Mr. Neff, does the government wish to be heard?

20 MR. NEFF: Yes, your Honor. Thank you.

21 I would like to briefly speak to the 3553(a) factors
22 and also briefly respond to some of the defense's points from
23 today.

24 As to the nature of the offense, the defendant made a
25 calculated, deliberate decision to lie about his and Clark's

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1 involvement in the Silk Road. The defendant tried to inject
2 false information into the justice system. He tried to
3 obstruct Clark's case. He put his loyalty to Clark first. He
4 put loyalty before truth. He wanted his very close confidante
5 to get off scot-free. These were the defendant's decisions,
6 and it was *déjà vu* all over again.

7 In 2013, the defendant tried to obstruct the
8 investigation of Clark. In 2019, the defendant tried to
9 obstruct the prosecution of Clark. 2013 involved physical
10 evidence in London. 2019 involved false statements in New
11 York.

12 The defendant's false statements were the culmination
13 of a multiyear, multicontinent, multifaceted campaign of
14 obstruction. It's worth noting that if other people did what
15 the defendant has done, it would have significant consequences
16 for the justice system, for defendants, for victims, for the
17 public's trust in the system, to name just a few of the
18 consequences. So from the perspective of general deterrence,
19 we ask the Court to send a very clear message that deliberately
20 injecting false information into the justice system comes with
21 serious consequences.

22 As to specific deterrence, there were so many major
23 moments across this eight-year campaign when the defendant
24 could have stopped and should have stopped. Seven such moments
25 promptly come to mind: Ulbricht's arrest, Ulbricht's bail

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1 arguments, Ulbricht's conviction, Ulbricht's life sentence,
2 Clark's being publicly identified, Clark's arrest, Clark's
3 extradition. That's seven major moments from 2013 to mid 2018.
4 Any one of these moments should have conveyed to the defendant
5 enough is enough. Stop committing crimes. And in particular
6 one certainly would have thought that a life sentence for
7 someone you directly helped, Ross Ulbricht, would have served
8 as a very clear wake-up call, that this is extremely serious
9 business, and I better stop playing with fire. But after all
10 of these moments, the defendant obstructed again through his
11 false statements in 2019, again trying to help Clark and
12 himself.

13 I want to briefly address a few of the points raised
14 by the defense today.

15 I believe the defense used the phrase at one point
16 "turned a blind eye." He didn't turn a blind eye. He knew
17 what he was doing. We quote the messages where the defendant
18 gave advice, technological advice, directly to Ross Ulbricht.
19 Ross Ulbricht's moniker, his online nickname at that time, was
20 Silk Road. This was not willful blindness. This is willful
21 participation. This was willful hacking followed by willful
22 aiding and abetting narcotics distribution, followed by willful
23 money laundering, followed by willful obstruction, followed by
24 willful lies. It was not just about Clark, as mentioned.
25 There was advice to Ulbricht, too. This was very willful and

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1 very harmful and a clear message -- we submit a clear message
2 should be sent that this is not acceptable and will not be
3 tolerated.

4 For these reasons, as well as those in our submission,
5 we respectfully request a sentence at the top of the guidelines
6 range.

7 THE COURT: All right. Thank you, Mr. Neff.

8 Mr. Robin, does your client wish to address the Court
9 before sentence is imposed?

10 MR. ROBIN: My client and I have discussed that,
11 Judge, and his preference would be to allow me to speak for him
12 and not to make a statement today.

13 THE COURT: Very well.

14 So the defendant, Michael Weigand, comes before this
15 Court, having pled guilty to making false statements to
16 government officials, a serious crime against the United
17 States, to be sure. In this particular case, those false
18 statements went beyond their mere falsity to essentially try to
19 sidetrack the government's efforts to bring to an end a vast
20 global criminal enterprise known as the Silk Road.

21 This Court has reviewed the presentence investigation
22 report. I adopt the findings of fact in the report as amended
23 here on the record as my own, and I will cause the report to be
24 docketed and filed under seal as part of the record in this
25 case.

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1 Turning to the guidelines calculation, the base
2 offense level for making false statements is six and the
3 specific offense characteristic here, based upon his false
4 statements relating to money laundering activities, as
5 Mr. Robin has noted, propels that base offense level of six by
6 six more units.

7 Now, the defendant pled guilty and accepted
8 responsibility for his criminal act and, accordingly, I grant
9 him a two-level reduction, and so his total offense level is
10 10.

11 As the parties have noted, this is his first criminal
12 conviction and so, with a criminal history category of I and a
13 total offense level of 10, his guideline range is from six to
14 twelve months of imprisonment.

15 Now, of course, as in all cases before the Court for
16 sentencing, the question is what to do with this individual who
17 is before me. He is in some ways a very puzzling figure to me.
18 He grew up in a firmly middle class background, with a nuclear
19 family and siblings, you know, all of whom have gone on in
20 their lives, many of them professionals. He, too, went to
21 college, got an engineering degree, and became essentially a
22 software engineer, working for a portion of his life as an
23 independent contractor and then working for various firms.

24 He is obviously very bright. He has a very special
25 technical expertise that he brought to bear in essentially

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1 helping to enable a criminal enterprise that he certainly
2 should have seen the red flags that were all around him with
3 respect to Mr. Clark and Mr. Ulbricht.

4 And he continued on this path for a number of years,
5 even after the government had uncovered Silk Road and arrested
6 its founder and was prosecuting the founder's right-hand man,
7 Mr. Clark, through extradition proceedings. But he went on
8 with the disinformation.

9 And so it's a serious offense that requires both
10 general deterrence, for the obvious reasons, and specific
11 deterrence. And while, you know, he didn't found Silk Road, he
12 certainly helped perpetuate its existence by providing
13 technical expertise to Clark and Ulbricht, and even taking acts
14 like traveling, traveling to London on very short notice to
15 remove evidence from Clark's apartment, and going in a
16 disguised way, going through Toronto, as if he were not
17 traveling overseas. It was very much cloak and dagger. And
18 were it not for the incredible work of the IRS agent who first
19 started on this case and his keen analytical insights, who
20 knows how long this may have continued and how much harm it
21 could have caused to people not only in the United States but
22 around the world? So I do think that there is, as I said, a
23 compelling need for deterrence.

24 I am also somewhat skeptical of the defendant's
25 argument that there is little possibility of recidivism here,

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1 given his age. These were -- this was a crime that essentially
2 in part is committed almost anonymously and, therefore, it can
3 be particularly pernicious.

4 So I do think that some term of imprisonment is
5 entirely appropriate here. I think that the defendant received
6 from the government a very tempered plea offer, which the
7 defendant accepted, and that also helps to bring finality in
8 the case. I am cognizant of the defendant's medical issues,
9 and I do not intend for him to serve a term of imprisonment
10 while the -- while the pandemic is ongoing and there are
11 outbreaks in correctional facilities around the country. But
12 this is a crime that contributed to a much larger crime for
13 which he was not charged, a crime that, as the parties have
14 already observed, led to a term of life imprisonment for the
15 leader of Silk Road, which was affirm by the Second Circuit,
16 and because of the anonymity that these sort of dark web
17 enterprises can enjoy, it makes it incredibly difficult for law
18 enforcement to be able to root them out.

19 And so it is against this backdrop, looking at who
20 Mr. Weigand is, you know, a very intelligent, analytical,
21 thoughtful person, raised -- not only did he grow up in a good
22 family in Ohio, he and his wife have raised a good family in
23 Ohio, and he has, you know, two sons that he can be very proud
24 of. And so it gives me no pleasure to have to impose a term of
25 imprisonment on him, but I will not shirk from that duty

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1 because I think that his conduct over a period of eight years,
2 culminating in his false statements and his dissemination of
3 disinformation, warrant a term of imprisonment.

4 And so, Mr. Weigand, it is against that backdrop, sir,
5 and I have tried to explain to you why I believe a term of
6 imprisonment is appropriate here, it is my judgment, sir, that
7 you be sentenced to a term of eight months of imprisonment, to
8 be followed by three years of supervised release, subject to
9 all of the standard conditions of supervised release, and the
10 following special conditions:

11 First, that you will submit your person, property,
12 residence, vehicle, papers, computers, other electronic
13 communication, and data storage devices, cloud storage, or
14 media and effects to a search by any United States probation
15 officer and, if needed, with the assistance of any law
16 enforcement. The search is to be conducted when there is a
17 reasonable suspicion concerning violation of the conditions
18 of supervision or unlawful conduct by the person being
19 supervised. Your failure to submit to such a search may be
20 grounds for revocation of release. You are to warn any other
21 occupant of the premises where you reside that those premises
22 may be subject to search pursuant to this condition and any
23 such search will be conducted at a reasonable time and in a
24 reasonable manner.

25 Further, I'm going to require you to provide your

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1 probation officer to access to any requested financial
2 information, and I am going to require you, as well, to not
3 incur any new credit card charges or open additional lines of
4 credit unless you are in compliance with a brief installment
5 payment schedule that I am going to impose upon you. I am
6 going to impose a -- I cannot agree with probation to impose
7 the fine that they propose, but it is my judgment that you
8 should bear some financial consequence for this, because it was
9 really driven by an interest in financial gain. And so it is
10 my judgment that you should pay a fine of \$4,000. It can be
11 paid in installments over time, and you are going to be
12 continuing, I presume, to work for a while, awaiting surrender,
13 and so I think that it is likely that this fine should be paid
14 between now and the time that you do surrender to the United
15 States Marshal Service.

16 I am also going to impose the mandatory \$100 special
17 assessment which will be due and payable immediately.

18 Now, this constitutes the sentence of this Court,
19 Mr. Weigand. I advise you that to the extent you have not
20 previously waived your right to appeal, you have the right to
21 appeal. I advise you further that if you cannot afford
22 counsel, counsel will be provided to you free of cost.
23 Mr. Robin has done an outstanding job for you in connection
24 with this matter, in his negotiation of the plea and in his
25 submissions on your behalf with respect to sentencing, and I am

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1 confident that he will advise you further with respect to your
2 appellate rights.

3 Now, I can't see into the future, but for now, I am
4 going to propose that your surrender date be in April of 2021.
5 And if, Mr. Robin, the situation within the Bureau of Prisons
6 or generally with respect to the pandemic has not been resolved
7 by that time, you may feel free to make a further application
8 to me to extend his surrender date.

9 Now, if you will bear with me for one moment, I will
10 set his surrender date to a facility to be designated by the
11 Bureau of Prisons on April 29, 2021.

12 Are there any further applications from the
13 government?

14 MR. NEFF: No, your Honor. Thank you.

15 THE COURT: Mr. Robin, are there any further
16 applications from the defendant?

17 MR. ROBIN: Yes, Judge. I would ask you to consider a
18 recommendation that he be incarcerated as close to home as
19 possible to facilitate family visits.

20 THE COURT: I will include that recommendation on the
21 face of the judgment, Mr. Robin.

22 MR. ROBIN: Thank you.

23 THE COURT: All right. Now, what district, what
24 judicial district does he live in in Ohio?

25 MR. ROBIN: Northern judicial district.

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1 THE COURT: All right. I will include that in the
2 recommendation.

3 All right. This proceeding is concluded. I wish all
4 of you a safe holiday season.

5 Mr. Weigand, I trust that you will learn from all of
6 this and that I will not see you again in connection with any
7 violation of supervised release, so I wish you the best of
8 luck.

9 Have a good afternoon.

10 THE DEFENDANT: Thank you, Judge.

11 MR. ROBIN: Thank you.

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